CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 424.

UNION TRUST COMPANY AND SECURITY WAREHOUSING COMPANY

vs.

HENRY L. WILSON, TRUSTEE IN BANKRUPTCY OF HARRY L. FLADDERS.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED DECEMBER 24, 1904.

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INDEX.

	Original.	Print.
Certificate from the United States circuit court of appeals for the seventh circuit	1	1
Statement of the case	1	1
Plan of construction	3	2
Storage receipt	5	4
Questions certified	8	6
Judges' certificate	8	6

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In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1904.

UNION TRUST COMPANY and SECURITY WAREHOUSING COMPANY, Appellants,
vs.
HENRY L. WILSON, Trustee in Bankruptcy of Harry L. Flanders.
} Nos. 1102, 1104.

NOVEMBER 9TH, 1904.

In this case, duly argued and submitted to this court, there were questions of law concerning which the court desires the instruction and advice of the Supreme Court of the United States.

Harry L. Flanders was for some years prior to October 27th, 1903, a wholesale dealer in leather, occupying under lease a store on Lake Street in Chicago, Illinois, 18 or 20 feet wide and running back 132 feet to an alley. At the rear of the premises on the first floor is a platform which extended to the alley and was used for shipping goods. The front portion of the first floor was used as an office and was partitioned off about 25 feet from the front of the premises. In this partition was a door through which access was had to what is known as the store room, which occupied the balance of that floor.

The Security Warehousing Company is a corporation organized under the laws of New York, with power to transact, and it has for more than two years last past been engaged in transacting, the business of a warehousing company on a large scale throughout the United States. As a rule, except in a few cases, it owns no warehouse of its own and maintains no warehouse building wherein it stores the property of sundry persons, but its general method of warehousing is the leasing from persons desiring to obtain its receipts, of all or a portion of a building or the leasing of vacant land from such persons, and the placing thereon of property and issuing receipts therefor substantially in the manner hereinafter stated.

In April, 1903, a written agreement was entered into by Flanders and the warehousing company, providing for the receipt by the warehousing company from Flanders of personal property for storage, and the issuance of storage receipts therefor, and further providing, among other things (1) that Flanders should indemnify and hold harmless the warehousing company against the claim of any holder of storage receipts for property stored therein on account of the loss, damage or destruction of the property stored, unless it should be held due to acts of dishonesty on the part of the warehousing company's agents, servants, or employés, whether the stor-

age receipts be in the hands of the original owner or any one else; and

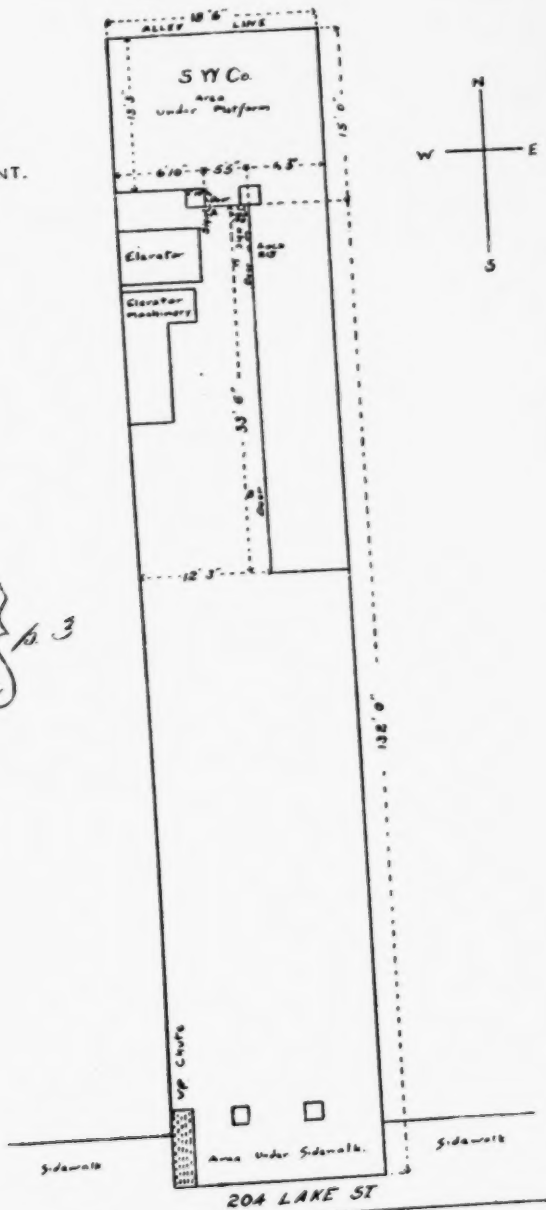
(2.) Flanders also agreed to pay the warehousing company as compensation for the storing of said property, and issuing its storage receipts, as follows: $20.00 per month for property of a market value of $10,000 or less, and for all property in excess of ten thousand dollars of market value, one dollar ($1.00) per month per thousand dollars of market value, and in addition thereto, the expenses, cost of inventories and inspections, incurred by the warehousing company, and an amount equal to the salary paid by the warehousing company to any custodian placed by it in charge of said property and premises.

Thereupon Flanders partitioned off the rear of the basement and a portion of the east side thereof, making an L-shaped enclosure. The partition consisted of wooden boards closely fitted together running perpendicularly from the floor to the ceiling. There were three large sliding doors about six feet wide in this partition, which opened by sliding horizontally on an iron rod or strip at the top. The following is a plan of the basement after the construction of this enclosure:

(Here follows diagram marked page 3.)

1102, 1104

PLAN OF BASEMENT.



No 424.
Union Trust Co. } p. 3
Wilson, Trustee

4 On May 1st, 1903, Flanders executed a written lease of the space thus enclosed to the warehousing company, for a period of one year and so long thereafter as property should remain therein, for which receipts of said warehousing company had been issued and were in force, at a nominal rental. In said lease Flanders agreed to give the warehousing company easy and convenient access at all times to said leased premises through the balance of his said premises.

Flanders immediately gave to the warehousing company a key to the front (street) door of said first floor, which key at all times thereafter remained in the possession of the warehousing company; by use of such key said company was enabled to reach such enclosed premises at all times of day or night from May 1st, 1903.

Immediately after the execution of the lease there was placed upon each of these three doors a padlock with the name of the warehousing company stamped or indented upon it, and from that time these padlocks and doors were continually locked, except when opened by the agents of the warehousing company for the purpose of inspecting the goods placed therein or delivering portions thereof upon the receipts hereinafter mentioned. All the keys to said locks were always in the possession of the agents for the warehousing company, who alone had access into said enclosed space.

The warehousing company caused to be placed upon the outside of this wooden partition two signs, which were at the points designated on the above plat by the word "sign," and recited in large type that the premises were leased and occupied by the warehousing company as a public warehouseman. One of these signs (that opposite the elevator) was readable by the natural light coming through the box window and down the elevator shaft (when the elevator was down) by anyone alighting from the elevator. By means of the artificial and natural light in the basement the other sign was also readable. These signs since placed there have remained upon said partition.

A freight elevator in said building descended into said basement at the point marked "Elevator" on said plat and was the only means of access to the basement. This elevator was an ordinary freight elevator, the shaft being about six feet square and enclosed on the first floor. Access to said elevator from the first floor was

5 had by means of a sliding wooden door, to which there was a lock and key. When this door was locked, access to the elevator could not be had. The storage company did not have a key to this door, but the key was kept on a nail, convenient for use. The only natural light in the basement was such daylight as came down the elevator shaft and through the two windows in the rear, which were immediately north of said elevator space in the basement and west of door "A" in said plat. These windows were about 6 by 2 feet and opened out over said shipping platform. One of them opened into the enclosure and the other into the uninclosed portion of the basement.

Since the making of said lease no one without the consent and co-operation of the warehousing company could get into said enclosure or acquire physical control or possession of the goods stored therein without breaking through the said partition or doors or windows opening into said enclosure.

From time to time since said inclosure was completed certain bundles of leather belonging to Flanders were placed therein, and thereupon the warehousing company gave Flanders receipts in the following form:

Storage Receipt of Security Warehousing Company.

General offices, 346 Broadway, New York.

District offices, 540 Rookery, 217 La Salle St., Chicago.

Date, May 11, 1903. Issued at Chicago, Illinois.

The Security Warehousing Company certifies that it has received on storage in premises No. 194, located at Chicago, Illinois, 204 Lake street, basement, subject to the order of H. L. Flanders & Company, Chicago, Illinois, the following commodity, viz: Thirty five (35) bundles leather, said to be flexible splits "H" and measure seventy two hundred and fifty-four (7254) square feet. Pile No. 199. Located in section No. 15. To be known as lot # 140.

Said commodity to be retained on storage and delivered only upon surrender of this receipt properly endorsed and payment of all charges thereon. Provided, however, if such commodity or any part of it remaining undelivered be uncalled for within one year from the date hereof, the Security Warehousing Company may at its option, upon giving three days' notice of its election so to do store the whole or the undelivered part of such commodity elsewhere at the expense of whomsoever may then be entitled to same.

The Security Warehousing Company in no event shall be
6 under any liability for errors or mistakes committed in the inspection of such commodity unless claim in writing therefor be made upon it within one year from the date hereof, and the said company shall not be liable for the destruction of or damages to such commodity by fire, water or from inherent qualities of the property.

Storage and charges as per contract.

SECURITY WAREHOUSING COMPANY,
By ALEX GRIEG, *President.*

All of the receipts outstanding were issued prior to October 29th, 1903. Each of said receipts covered a separate lot of leather located in said enclosed space at the time of the issuance thereof, and contained a lot number and distinguishing mark corresponding with those upon the lot of leather for which it was issued.

At the time each of said lots of leather was placed in said enclosure there was also placed thereon a printed card, reciting that such property was in the possession of the warehousing company and containing the lot number and distinguishing mark which were upon the receipt issued for such lot. These cards so remained on said lots during all the time the lots were in said enclosure, and one going into some portions of said enclosure, by the natural light from said window, and by the use of artificial light in other portions thereof, would at all times have been able to see said cards and the printing thereon, and no one could have well handled any of said leather without observing the cards attached thereto and the printing thereon.

Each of the receipts so issued by said warehousing company was, about its date and prior to October 29, 1903, endorsed and turned over by Flanders to the Union Trust Company of Chicago, as collateral security for loans then made by it to him, for which it took his notes. The trust company loaned said moneys and took as security therefor said receipts in the regular course of its business. When Flanders desired to take leather out of the enclosure he would pay to the trust company a certain amount of money on account of the note or notes secured by the receipt covering such leather, and the trust company would deliver said receipt to Flanders,
7 taking from him an agreement to return the same. Flanders would then request the warehousing company to send its representative to the premises; the representative would unlock the enclosure; Flanders' employés would remove the leather; the representative would endorse on the receipt the amount of leather withdrawn and Flanders would return the receipt so endorsed to the trust company, except when all the leather covered by the receipt was so delivered, when the receipt would be surrendered to, and be cancelled by, the warehousing company.

None of the leather placed in these enclosures was released or taken out in any other way or under any other circumstances than as above. Flanders did not have access to said leather or said enclosure, and no leather was placed in said enclosure for which receipts were not issued by the warehousing company as aforesaid. The space within such enclosure was not used for any purpose except the storage of the leather for which the warehousing company issued its receipts as aforesaid. Periodically and on an average of about once a week an agent of the warehousing company visited the enclosed premises for the purpose of inspecting the same and ascertaining whether there had been any disturbance of the property or enclosure.

Flanders never deposited all of his stock of any one kind of leather in the enclosure. He always retained in the store room at least a sample or samples, and sometimes sold by sample, taking the leather from the enclosure for delivery to the purchaser by the procedure above described.

The trust company still holds all said receipts. The loans so

made by it to Flanders and still remaining unpaid, aggregate $54,449.09, represented by notes of Flanders.

The warehousing company had no office on the premises of Flanders, its only office in the city of Chicago being approximately half a mile from these premises; nor did the warehousing company have any representative permanently on the premises of Flanders; nor were there any signs upon the exterior of said building; nor did the name of the warehousing company appear in any way or in any place on said premises, except upon the signs in the basement above described. No leather was ever placed in said enclosure except leather belonging to Flanders.

On October 29th, 1903, in the district court of the United
8 States for the northern district of Illinois, Flanders was adjudged a bankrupt, and Henry L. Wilson, being appointed his trustee in bankruptcy, filed a bill alleging that said storage arrangement was fraudulent, and claiming the leather then within the enclosure upon the ground that it always remained in the possession and control of Flanders, and by reason thereof came into the possession of said trustee, and praying that the receipts be adjudged void, and for a receiver, etc., and from a decree in such suit an appeal was perfected to this court.

Upon the facts above set forth, the questions of law, concerning which this court desires the instruction of the Supreme Court are:

1. Whether, upon the facts above recited, the receipts issued by the warehousing company are to be deemed valid warehouse receipts, so that their endorsement by Flanders to the trust company, as security for loans, constituted a pledge or pledges to the trust company of the leather covered by such receipts, which would be valid against attaching creditors.

2. Whether, if the receipts are not to be deemed valid as *warehouse receipts*, upon the facts above recited, the transactions are to be regarded as constituting pledges of such leather by Flanders to the trust company, which would be valid as against attaching creditors.

3. If there was no pledge, whether the trust company, under the facts above recited, acquired an equitable lien upon such leather that is superior to the title thereto of the trustee in bankruptcy.

These questions the court this day orders certified and submitted to the Supreme Court of the United States.

JAS. G. JENKINS.
P. S. GROSSCUP.
FRANCIS E. BAKER.

Endorsed on cover: Certificate. File No. 19,524. U. S. circuit court of appeals, 7th circuit. Term No. 424. Union Trust Company and Security Warehousing Company *vs.* Henry L. Wilson, trustee in bankruptcy of Harry L. Flanders. Filed November 11th, 1904. File No. 19,524.